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CURRENT TOPICS

New Year Honours

WE tender our sincere congratulations to LORD JOWITT on his being raised from a Baron to a Viscount in the New Year Honours, and to LAWRENCE, L.J., on his elevation to a barony. Both are giants of to-day, and their achievements will live after them. We congratulate also Mr. CLEMENT EDWARD DAVIES, K.C., M.P., chairman of the Liberal Parliamentary Party, on his attainment of the rank of Privy Councillor, as well as Mr. ARTHUR HENDERSON, K.C., Parliamentary Under-Secretary of State for India and for Burma since 1945, on his being accorded the same honour. Among others whom we congratulate are Lieut.-Colonel NEVILLE ANDERSON, Presiding Special Commissioner of Income Tax, Mr. HENRY NAZEBY HARRINGTON, Solicitor to the Board of Customs and Excise, MASTER HOLLAND, Chief Master in the Chancery Division, Mr. WILFRID WALTER NOPS, Clerk of the Central Criminal Court, and WALTER ADDINGTON WILLIS, the Umpire under the Unemployment Insurance Act, all of whom become Knights Bachelor.

The Hilary Law Sittings

MOST of the lists of cases set down for hearing in the High Court during the Hilary Law Sittings, which commence on 11th January, show significant increases, when compared with the lists this time last year. The King's Bench Division shows a decrease of forty, the total this year being 447 cases. The chief decrease is in the number of long non-jury cases, 157, as against 201 last year, but the short non-jury list remains steady, with 276 actions as against 274 last year. There are five short causes as against nine last year, and four commercial list cases as against three last year. In the Chancery Division, a total of 163 causes and matters exceeds last year's total by ninety-eight. The sixty-six companies' matters (fifty-six last year) will be heard by Mr. Justice VAISEY. There are seventy-seven non-witness actions (twenty-five last year) and thirty-eight witness actions (sixteen last year), and retained matters number forty-eight. The tide of matrimonial suits shows a very slight sign of receding before the vigorous reforms of last year and the figure for next term is 3,010, as against 3,416 a year ago. There are, however, 2,647 undefended cases, as compared with 2,503 last year, but the defended cases have fallen from 768 to 218. Six Admiralty actions for trial compare with four last year. In the Divisional Court, 200 appeals constitute an increase of 91 over last year. In the Divisional Court list there are forty appeals (forty-eight last year), thirty-one in the Revenue Paper (no change) and five in the Special Paper (eight last year). There are 109 appeals under the Pensions Appeal Tribunal Acts (eleven last year) and 7 under the Housing Acts (eight last year). In the Court of Appeal, the figure for the Hilary term is 227, an increase of 119 over last year's Hilary term figure, and more than double. The main increase is in the number of appeals from the King's Bench Division, which has jumped from 41 to 111. From the Chancery Division, there are only six appeals (ten last year). In Probate and Divorce, there are thirteen appeals (eight last year), and there are eighty-eight County Court appeals, including thirty-seven workmen's compensation cases (thirty-nine and eleven respectively last year).

Sir John Eldon Bankes

YET another outstanding personality in the legal world has passed away. The Right Hon. Sir JOHN ELDON BANKES, who died on 31st December, 1946, at the age of ninety-two, after a short illness, was a Lord Justice of the Court of Appeal from 1915 until 1927, when he retired. From 1910 until 1915 he was a judge in the King's Bench Division. He was born under happy auspices, his great grandfather, on his father's side, having been Lord Chancellor Eldon, and his mother was the daughter of Sir John Jervis, Chief Justice of the Common Pleas from 1850 to 1856. A more remote ancestor was Sir John Bankes, Chief Justice of the Common Pleas from 1641 to 1644. John Eldon Bankes was in the Eton eight in 1872 and he obtained his rowing blue at Oxford in 1875. He was called to the Bar in 1878, became a Bencher in 1899 and took silk two years later. In 1907 he was appointed a member of Lord Macnaghten's Judicature Committee. He also served for twenty years first as treasurer and then as chairman of the London Diocesan Fund. In 1927 he presided over the committee on Welsh education, and in 1934 he succeeded Lord Darling as chairman of the National Marks Committee. In 1935 he became chairman of the Royal Commission on Arms Traffic. For thirty-three years he was chairman of Flintshire Quarter Sessions, retiring at the age of ninety. A great judge has gone from our midst, and also, as the Bishop of Exeter wrote in *The Times* of 4th January, a devoted churchman and great-hearted Christian.

Lord Macmillan

IT is to be hoped that LORD MACMILLAN'S resignation from his office of Lord of Appeal in Ordinary, as from 5th January, will not mean his complete retirement from public life. Active as he has been in his attendance at House of Lords appeals, he has also found time to be chairman of the Pilgrim Trust and trustee of the British Museum and of the National Library of Scotland. It will be remembered that he was

Minister of Information from September, 1939, until January, 1940. During his fifty years at the Bar and on the bench Lord Macmillan has presided over a large number of committees and conferences, the most notable being the Mines Conference in July, 1925, the Treasury Committee on Finance and Industry in 1929, and the more recent Committee on Income Tax Law Codification. He commenced practice at the Scottish Bar in 1897. Later on, after a prosperous practice in Scotland, he came to London and practised at the Parliamentary Bar. He was Lord Advocate for Scotland in 1924 and in 1930 he became a Lord of Appeal in Ordinary. Lord Macmillan is among the greatest of the Scottish judges who have graced the final tribunal of appeal. The appointment of LORD NORMAND to succeed Lord Macmillan continues the great tradition. Lord Normand has been Lord Justice-General and Lord President of the Court of Session since 1935, having been Solicitor-General for Scotland in 1929 and 1931 and Lord Advocate from 1933 to 1935. He was educated at Fettes College, Edinburgh, and Oriel College, Oxford, as well as at Edinburgh University, became an advocate in 1910, and took silk in 1925. LORD COOPER, Lord Justice Clerk for Scotland since 1941, succeeds to the offices of Lord Justice-General and Lord President of the Court of Session. He was called to the Scottish Bar in 1915 and took silk in 1927.

Gaming and Wagering

HITHERTO every fresh wave of gambling fever in English history has been met by a fresh wave of legislation. In spite of much criticism of the gaming laws that have been enacted in the last two centuries on the ground of their complications, contradictions and illogicalities, they have succeeded in reducing the number of gambling dens, keeping the streets and public places free from the nuisance of idlers and professional gamblers using them for gaming purposes, and freeing the courts from the disreputable spectacle of gaming litigation which at one time disfigured them. Most advocates with experience of the enforcement of the gaming laws in the magistrates' courts will be able to testify to the healthy social service which this enforcement achieves. The latest efflorescence of the gambling fever in football pools and greyhound racing fulfils all the tests which formerly distinguished the type of betting which it was the policy of the Legislature to discourage. The main interest of such " amusements " is not the interest of sport, but that of gambling. If it be said that a little " flutter " can do no harm to an individual or a society, the answer is in the official figures of totalisator receipts: £137,715,273 in 1945, compared with £74,845,814 in 1944 and £39,352,839 in 1938. This is no " little flutter." We are presented here with all the appearances of an alarmingly rapid moral decline. It is estimated that the bookmakers' turnover was 80 per cent. of that of the totalisators. Attendances at dog-racing tracks in 1945 are estimated at an average of 4,000 at each meeting, giving a total of 50,000,000 for the year. What this means to our jeopardised finances needs no further illustration, and we heartily endorse the view of the Churches' Committee on Gambling that the spread of gambling habits in this country is a serious threat to moral welfare and national reconstruction.

Probation, Separation and Divorce

WE are indebted to the issue for November-December, 1946, of *Probation*, the organ of the National Association of Probation Officers and the Clarke Hall Fellowship, for particulars of memoranda submitted by the Association to the Royal Commission on Justices of the Peace and the Departmental Committee on the Administration of the Divorce Law respectively. The former memorandum recommends that justices of the peace should be required, after appointment, but before they sit, to attend a course of instruction laid down by a competent authority, and that all magistrates should be required to retire at not later than seventy years of age. It also states that, where stipendiary magistrates are already appointed, they should be encouraged to sit on the juvenile courts in the area, though not necessarily acting as chairmen. The Association considers that special panels of justices for matrimonial work are desirable, and should be selected from the general panel. It suggests that one woman justice should sit at each matrimonial court, but deprecates any attempt by members of the court themselves to engage in the work of conciliation. In the second memorandum the Association states that the experience of the probation service in matrimonial conciliation throughout the country indicates that the proportion of divorce cases in which reconciliation might be possible would justify the setting up of machinery for the purpose. The probation service readily lends itself for use in this connection. Conciliation should be attempted at the earliest possible moment after the filing of a petition. The present doctrine as to condonation would discourage reconciliation in many cases, and it would be important to amend the present position so that a reconciliation which subsequently broke down within a specified period, say, twelve months, should not prejudice subsequent proceedings on the facts which were the original subject of the petition. A further suggestion is that in the event of the question arising of the custody of the children in any particular case, the probation service could be used to investigate, on behalf of the court, the suitability of the parents or the arrangements which they could offer.

The Rent Tribunals

THE success of the rent tribunals in achieving the ends for which they were created has been incontrovertible and beyond expectation. When one recalls the comparative failure of the repeated appeals to local authorities to take action in the courts, and the reluctance of magistrates' courts to convict defendants of charges of exacting extortionate rents, the statistics now available and the facts made known through the press of the exactions which were tolerated before the Act was passed show how sorely this legislation was needed. In fifty-six cities, towns and boroughs, 3,448 cases have been brought before the tribunals and reductions have been made in 1,113 cases. The highest percentage of rent reduction in the London area was fifty-six per cent., at Walthamstow. In Stepney, the percentage was fifty per cent; Willesden, forty-four per cent.; Islington, forty per cent; Tottenham, thirty-eight per cent.; Southwark, thirty-five per cent.; Kingston-on-Thames, thirty-four per cent.; and East Ham and West Ham, thirty-three per cent. These figures give some indication of the measure of the problem in London. Generally throughout the country there are over sixty tribunals now in operation, but 769 local authorities, most of them urban and rural district councils, had not by 13th December made applications to have rent tribunals established in their areas. The publicity given by the press to the activities of the tribunals has had its effect far beyond the cases actually brought before them, and landlords of furnished apartments are now much more careful than they have been in the past about the rents they charge. No doubt the unscrupulous landlord will always seek to turn his attention to new " rackets," but at any rate the public has the satisfaction of realising that here is a field of speculation in misery in which it is becoming increasingly difficult to operate.

The Agriculture Bill

SUCCESSIVE agricultural statutes have recognised that good husbandry is the indispensable foundation for any national farming policy. The latest development of this principle is to be found in the Agriculture Bill now before Parliament, which proposes that it be enacted as a permanent measure that if an owner or tenant is considered not to be complying with the rules of good husbandry or good estate management, the Minister shall have power to place him under supervision and to serve such directions as may be necessary to oblige him to fulfil his responsibilities. The Bill proposes to exclude the right of appeal against supervision orders or directions, but if after twelve months the owner or tenant fails to show any satisfactory improvement, the

Ministry, it is proposed, should have power to dispossess him, subject to appeal to an Agricultural Land Tribunal. There would be an Agricultural Land Tribunal for every agricultural area, consisting of an independent legal chairman appointed by the Lord Chancellor, as well as a landowner, and two assessors with professional agricultural qualifications. This would be a final appeal, instead of the present final appeal to the Minister under the emergency legislation. Whether or not there is a good case for permanently continuing the controls that were commenced to meet war-time needs, the fact remains that there is every probability that some measure of control similar to, if not identical with, the proposals in the Bill will become law. The substitution of experts on a tribunal for the expert opinion of a local bank manager or a landlord on the question of dispossession is, at all events, an improvement on a state of affairs under which a farmer might find himself threatened with eviction and unable to put his case before an independent tribunal.

Good Husbandry

OTHER clauses in the new Agriculture Bill disclose an emphasis on good husbandry. The owner, for example, must obtain the consent of the Ministry of Agriculture in order to give an effective notice to quit. If the Minister is not satisfied that the carrying out of the purpose for which the landlord proposes to terminate the tenancy would be likely to result in the more efficient use of the land for agriculture, he must withhold his consent. A useful innovation is that the Minister's decision is to be subject to appeal to the Agricultural Land Tribunal. In view of the fact that it might be unfair to owners of agricultural land who had acquired it before having full notice of the effect of the Bill to prevent them from farming it themselves or through one of their children, there is a clause in the Bill which provides that where a landlord bought the land before 25th March, 1947, the Minister shall not be required to withhold his consent if the owner intends to farm the land himself or through a child or grandchild or a step-child, adopted child or illegitimate child.

The Death Penalty in U.S.A.

AN American view on the question of the death penalty comes from the *Boston Herald*, of 19th July, 1946, via the *Massachusetts Law Quarterly*, of October, 1946. Referring to a letter in favour of allowing a jury in a capital case "to recommend life imprisonment instead of death," the writer, Mr. FRANK W. GRINNELL, wrote that he knew nothing in the law of Massachusetts to prevent a jury from finding a verdict with a recommendation for mercy and no judge could refuse to accept it and transmit it to the Governor and council for consideration in the exercise of the executive function of clemency. The writer saw it happen in a capital case in London tried before the late Lord Hewart, L.C.J., at the Old Bailey. The Lord Chief Justice charged the jury that they were to decide the question of guilt and were not concerned with the question of "mercy." Nevertheless, the jury brought in a verdict of guilty accompanied by a unanimous recommendation of mercy. The Lord Chief Justice then imposed the death sentence and stated to the jury that their recommendation would be transmitted to the proper authorities. The writer argued that a governor can secure more information from more sources bearing on the question of mercy than are available to a judge. Opinions differ about capital punishment, but so long as we have it it should not be made a matter of discretion for a single judge. The same argument applies *mutatis mutandis* to the English prerogative of mercy. He concluded that any statutory change in the function of juries in capital cases should go no farther than the provision in the United States Courts and in New Jersey, where the statutes allow juries to render verdicts with or without capital punishment. Mr. Grinnell suggested that perhaps the step which would excite the least opposition, at present, would be either for the court to inform the jury that if they wish to make a recommendation against the death penalty for the information and consideration of the governor and council they might do so and that it will be transmitted, or to pass a declaratory statute expressly recognising such procedure as within the present powers of a jury.

INTESTACY AND THE £1,000 LIMIT

(CONTRIBUTED)

A POINT of considerable importance, and some difficulty, to practitioners arises in connection with an intestacy where the net value of the estate is just below, or on the borderline of, the £1,000 limit. The rules governing intestacy provide that where the deceased leaves a widow (or widower) surviving, such survivor is entitled to the personal chattels absolutely and £1,000 free of death duties and costs with 5 per cent. interest until payment or appropriation, and the balance is to be invested and the income is enjoyed by the persons set out in the Administration of Estates Act, 1925. The difficulty which often arises is as to the value of the real estate. If the total estate after the deductions mentioned above does not exceed £1,000, the surviving spouse is entitled to take out administration; but if it exceeds that sum, two administrators are required.

In the case of a small estate where apart from personal chattels the estate consists of a dwelling-house or other real estate, it was reasonably easy in normal times to estimate the value of the property, and there would be no difficulty in deciding if the £1,000 limit had been exceeded. But in the present abnormal state of the property market it is often a matter of the utmost difficulty to put any accurate value on real property. The value may be estimated at under £1,000 and it is therefore thought necessary to have only one administrator, namely, the surviving spouse. But the district valuer may place a higher value on the estate, and it then becomes necessary to appoint an additional administrator and to have a further bond executed for the excess value of the estate. The formalities for this are very cumbersome and cause a great deal of extra work, further complicated by the fact that the persons entitled to share in the excess may be very distant relatives whose whereabouts may be, and often are, unknown. The probate officials quite naturally require that all persons having a prior right to the grant should be cleared off, and it is often difficult, and sometimes impossible, to ascertain the person or class of persons next entitled.

A precautionary measure might be that in all cases where there is any possibility of the £1,000 being exceeded there should be two administrators appointed in the first instance, but here again the difficulty of finding the interested parties would have to be surmounted. Explanations would have to be made as to why they were asked to join in the administration, and false hopes might be raised, only to be dashed if the estate proved to be within the £1,000 limit.

The writer has recently had to deal with a case where the intestate left a widow and a grandchild. Practically the whole of the assets consisted of real estate which was estimated to be worth £850, and on that assumption the total estate came under £1,000. The widow thereupon took out a grant of administration, but later the district valuer insisted on increasing the value of the real estate, bringing the total up to approximately £1,150. After allowing the usual deductions the net value will probably work out at something like £1,050, and thus for the sake of this extra £50 it becomes necessary to appoint an additional administrator and go through the formalities for increasing the bond, as a result of which the odd £50 will be further substantially reduced. In an extreme case one can easily visualise a state of affairs where, after having gone through all these formalities, the additional expense might be such

as actually to reduce the estate below the £1,000, in which case the additional administrator would be redundant.

Another case which has come to the writer's notice is one where the nearest interested parties (after the widow) are some very distant relations over seventy years of age, living in a remote part of the country and being practically blind and almost incapable of transacting any business. Even if these persons were able to sign the necessary papers and take out a grant of administration, it would be necessary to explain why this course had become necessary and thus false hopes might be raised.

There is another point which has arisen as a result of the Chancellor's concession in cases where the widow or some near relative is residing in the house and has no other accommodation. In these cases the value for probate is the value at date of death *without vacant possession*, and in present circumstances that value may easily be several hundreds of pounds less than the actual market price at date of death with vacant possession. It was specifically stated that this concession was for purposes of estate duty only, but in most cases the widow elects to have this property appropriated as part of her £1,000 and quite naturally claims to have this done at the probate value. On the other hand the Administration of Estates Act provides for the "realisation" of the estate, and realisation shortly after death in the ordinary course of administration would produce a much higher price, in which case the amount of residue (over £1,000) available for the next interested parties after the death of the surviving spouse would be considerably enhanced.

The writer is of opinion that on the true interpretation of the Act the property should be appropriated at its market value at date of death, i.e., with vacant possession. But who is to fix that market price? One solution would be for the district valuer to give two values, one with vacant possession and the other as tenanted; but the district valuer and the Estate Duty Office are only concerned with the value for the purpose of collection of duty, and are not interested in the value at which the property is to be brought into account for purposes of distribution. If the district valuer has the power, and would be prepared, to give these two values, the gross value could then be shown in the Inland Revenue Affidavit, the Chancellor's concession deducted, and the net value shown in the appropriate column. Thus the Estate Duty authorities would be satisfied with regard to the duty, and the true value for purposes of appropriation and administration would be clearly set out. The only alternative would be to have a professional valuation of the property at market price with vacant possession at the date of death: but could the reversioners be compelled to accept this valuation? After all, a valuation is only an expert "estimate" of the probable price in the open market, and in the present abnormal state of the property market even an expert valuer has difficulty in putting a selling value on property. This brings us back to the fundamental principle of the Administration of Estates Act, namely, that the administrator must "realise" the estate for purposes of distribution.

The whole subject bristles with difficulties and it is remarkable to find that many practitioners have ignored the points involved. It seems to be the practice to take out the grant and to appropriate simply on the figures inserted for duty purposes. I venture to think that there will be a rude awakening some day when reversioners turn up and claim to share in an estate which was originally under the £1,000 limit, but was afterwards increased to such a figure as would require an additional administrator and the investment of the surplus for the benefit of the next of kin upon the death of the surviving spouse.

COMPANY LAW AND PRACTICE

COMPANIES BILL—IV

THE only clauses in Pt. I of the Bill which have not yet been referred to are Nos. 34 to 38, the sub-heading to which is "Investigations."

The first of these clauses considerably enlarges the provisions of s. 135 of the Act, which is the section which empowers the Board of Trade, on the application of a specified proportion of the members of a company, to appoint an inspector to investigate the affairs of the company. These provisions would be enlarged by cl. 34 of the Bill so as to make it easier to obtain the appointment of an inspector and also so as to make the investigation a more thorough-going affair than it is under the present Act.

The next clause would give the Board of Trade a new power to appoint an inspector to investigate the affairs of a company in exactly the same way and with exactly the same results. This new power would be exercised by the Board of Trade if the company by a special resolution so resolved or the court so ordered, and might also be exercised, roughly speaking, if in the opinion of the Board of Trade there was something "fishy" about the company and it thought the matter was one of public interest. Very little use has hitherto been made of the powers contained in s. 135. It will be interesting to see whether wider powers will be invoked more frequently.

The Bill also provides for the Board of Trade to have the power to petition for the winding up of a company where it thinks it desirable to do so as the result of any report on such an investigation, and also, on giving indemnity to the company, to bring proceedings in the name of the company for fraud, misfeasance, misconduct in the formation or management of the company or for the recovery of its property. It remains to be seen how wide a use the Board of Trade would make of such powers, but one further proposed alteration of the law should be noted here. Section 136 provides that if the report discloses that an offence has been committed and the Board of Trade think that the case is one in which the prosecution ought to be undertaken by the Director of Public Prosecutions, it is to be referred to him, and if he considers that a prosecution ought to be instituted and that it is desirable in the public interest that he should conduct the proceedings, he shall do so. The Bill provides that in all cases where the Director thinks that a prosecution should take place he shall conduct the prosecution.

The Bill also includes some fairly elaborate provisions relating to the expenses of these investigations. The point of the greatest importance for those advising members of companies in this connection is that, if these provisions become law, the applicants for investigation will not be liable for any of these expenses if a prosecution is instituted as the result of the investigation, and that where no prosecution is instituted the applicants may be directed by the Board of Trade to pay all or any part of the expenses.

The last clause of this subsection of the Bill deals with investigations of a different kind. Probably the least satisfactory part of the report of the committee was that which dealt with the extremely difficult question of nominee shareholders, and I shall consider this question at greater length when I come to discuss Pt. II of the Bill, in which most of the provisions for dealing with this question are contained. The report made two suggestions, one of which was that if the Board of Trade considered it necessary in the public interest to investigate the ownership of shares in any company, they should have power to appoint an inspector to conduct such an investigation. Clause 38 of the Bill, which comes in Pt. I, provides for such a power, but an even more extended one. Not only may the inspector under this clause be asked to report on the people who really own the shares of the company, but his report is to be "on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or

failure (real or apparent) of the company or able to control or materially to influence the policy of the company."

This, it will be seen, is a power of very wide scope and could be used to inquire into matters quite divorced from the ownership of shares in a particular company. This was the question the committee was considering, and the view they took was that, other things being equal, it was desirable that people should know who owned the shares in a company, but that the convenience of the nominee system was so great that it should be retained. If there was any real case for any such inquiry it would presumably be a lengthy and costly process to get at the true facts, and it will be interesting to see what use is made of this power if this clause becomes law. The expenses of the inquiry are to be paid by the Board of Trade.

All the various matters that are dealt with by Pt. I of the Bill have now been noted, and I shall postpone for the moment consideration of Pt. II, headed "Share Capital and Debentures", and shall conclude this article by considering briefly Pt. III, which is called "Constitution of Companies and Matters Incidental Thereto." This part contains only five clauses, of a rather miscellaneous nature.

Clause 68, the first of these clauses, deals with the names of companies. As I have already pointed out, it is proposed that s. 17 of the Act should be repealed. That is the section which regulates the names of companies at present. Under it the name of a new company is not to be identical with or so similar to the name of an existing company as to be calculated to cause confusion, and the section contains various other restrictions on the use of certain words in the names of companies. In its place the Bill provides that the Board of Trade should have an unfettered discretion as to the name by which a company should be registered. The value of such an unfettered discretion will be that the registrar will be able to prevent a company with very small resources being registered by some pompous name, including such a word as "bank" or "trust," thereby preventing a certain amount of deception, and also to prevent the registration of names which may cause confusion with existing registered trade marks or with existing industrial and provident societies. The main principles would, however, be unaffected by this change, and even if a company becomes registered by a particular name it will still be open to some other person or company to bring proceedings against it to restrain it from trading under that name, on the ground that the use of it is calculated to cause confusion, on the lines indicated in this column some little time ago.

There is one other change proposed to be effected by the Bill in relation to the names of companies. Clause 47, which is to be found in Pt. I, provides that a company which carries on business under a business name other than its corporate name without any addition is to be obliged to register that name in the same way as under the Registration of Business Names Act, 1916, firms and persons who do not carry on business under their own names are at present obliged to register their business names.

The next clause in Pt. III of the Bill aims at allowing existing companies to obtain a licence to dispense with the use of the word "limited." In order to obtain the benefit of this provision the existing company would have to satisfy the Board of Trade that its constitution is in fact such that if it was about to be formed it could bring itself within the provisions contained in s. 18 (1) of the Companies Act. The succeeding clause is intended to prevent, with certain exceptions, a subsidiary company being a member of its holding company. One of the criticisms of the Bill in the second reading debate in the House of Lords was that the drafting of the Bill was more like that of a Finance Act than that of the Companies Act, 1929, and the drafting of the exceptions in this clause is a good illustration of that criticism, but I do not propose to examine them in detail.

The remaining two clauses of Pt. III of the Bill deal with the fees on registration of companies limited by guarantee having a share capital and of unlimited companies having a share capital, and certain small matters relating to the documents of Scottish companies. Unfortunately, as many will very likely think, no provision is contained in the Bill for implementing the recommendation of the committee for the repeal of s. 5, which lays down the conditions on which a memorandum of association may be altered, and for the granting to companies, as regards third parties, of the same powers as those of an individual. It seems probable, therefore, that we shall have with us for a considerable time yet the doctrine of *ultra vires* which the committee thought served no useful purpose, but was, on the other hand, a cause of unnecessary prolixity and vexation.

A CONVEYANCER'S DIARY

1946 CHANCERY—II

THERE were three reported cases in regard to the legal nature of charities. One of them was *Re Hobourn Aero Components, Ltd.'s Air Raid Distress Fund* [1946] Ch. 86, 194, which I discussed at some length in the "Diary" of 6th July, 1946. The question there was whether the fund was for the benefit of the community, or of a section of the community, or was held on behalf of the subscribers. The latter view prevailed, and the fund was therefore not a charity, and was returned rateably to the subscribers. Another case involving the element of benefit to the public was *Commissioners of Inland Revenue* v. *National Anti-Vivisection Society* [1946] K.B. 185. Whereas in *Re Hobourn* the fund was held not to be charitable because it was not for the benefit of the *public*, the National Anti-Vivisection Society was held not to be charitable because it was not for the *benefit* of the public. In so holding, the Court of Appeal in fact overruled the decision in *Re Foveaux* [1895] 2 Ch. 501, where Chitty, J., according to the headnote, had decided that "societies for the suppression and abolition of vivisection are charities within the legal definition of the term charity," one of the charities there concerned being, apparently, the same institution as was considered in the present case. Chitty, J., had ended his judgment with the following sentences: "the purpose of these societies, whether they are right or wrong in the opinions they hold, is charitable in the legal sense of the term. The intention is to benefit the community; whether, if they achieve their object, the community would, in fact, be benefited, is a question on which I think the court is not required to express an opinion. The defendant societies may be near the border line, but I think they are charities." The judgment of Chitty, J., was strongly criticised by MacKinnon, L.J., in the recent case, his main point being that the court on such a matter could not "stand neutral" as Chitty, J., had stated, at page 503, that it must do; the issue between the supporters and opponents of the principle of vivisection is simply whether the practice of that principle is or is not of benefit to the community, and that is the very issue which, according to MacKinnon, L.J., the court has to determine. The learned Lord Justice went on to say that: "I readily assume that the motive which leads old women to make bequests to this society is concern for the welfare of the dear dogs. As one who has more than once experienced the grief of losing a beloved spaniel I can respect and applaud that motive, but I do not think my respect and applause can be expected when it becomes a matter of the dear guinea pigs and the dear rats. But the motive of those who provide the money is immaterial." The last observation is based upon the judgment of Russell, J., in *Re Hummeltenberg* [1923] 1 Ch. 237. MacKinnon, L.J., further pointed out that on the assumption and reasoning of Chitty, J., he conceived that a society "whose object was to secure legislation making illegal the manufacture and sale of rat-traps and rat poisons would have to be held established for

charitable purposes; . . . Indeed if it be true, as some may think, that—

> 'The poor beetle, that we tread upon,
> In corporal sufferance finds a pang as great
> As when a giant dies,'

a society to promote legislation to prohibit the manufacture and sale of all insecticides would seem to have a good ground for a like claim." The reasoning of the learned Lord Justice is no doubt of considerable force, but, with very great respect, it seems to overlook the argument that the purpose of societies of this kind is to benefit the human race by discouraging cruelty to animals, not for the benefit of the animals, but for the benefit of the human beings, who are degraded thereby. I do not think it would be impossible to argue that a society to promote legislation to prohibit the manufacture of unnecessarily cruel insecticides might become in certain circumstances charitable. The learned Master of the Rolls dissented from the judgment of MacKinnon, L.J., and from that of Tucker, L.J. The latter stated that in "approaching, as I do, for the first time the question of the application of Lord Macnaghten's fourth division in his definition of charitable trusts in *Pemsel's* case, namely 'trusts for other purposes beneficial to the community not falling under any of the preceding heads,' and experiencing some difficulty in ascertaining from the authorities the principles that have been applied, I am relieved to find that others more familiar with the subject have not met with any greater measure of success." The ground of the judgment of Tucker, L.J., appears to be stated clearly at page 214 as follows: "the offence of 'cruelty,' broadly speaking, involves an element of wantonness or the causing of unnecessary suffering, and, in considering what is necessary or justifiable, the requirements of man are to some extent taken into consideration. If, however, in the course of a trust for the benefit of animals, such a conflict does arise, it is, in my own view, the duty of the court to decide, and to decide on the evidence adduced with reference to the resulting benefit or detriment to the community." It is, of course, apparent from the report that evidence was available that the *material* consequences of the success of the respondent society in the more extreme of its aims would be disastrous to the community, and if the judgment of the Court of Appeal is eventually supported in the House of Lords (to which I imagine a case of this kind will get sooner or later), it will, I think, be upon the ground thus stated by Tucker, L.J., rather than upon the reasoning of MacKinnon, L.J.

The problem is however one of extreme difficulty, and it is evident that the charitable intention of the donor cannot in itself be decisive. For example, in *Re Beard* [1908] 1 Ch. 383, the court was faced with a condition divesting the interest of a devisee or legatee if he "were to enter into the naval or military service of the country." Such a condition was held void as being contrary to public policy, but I can well conceive some well-intentioned person at the present time trying to start a trust for supporting agitation for the abolition of conscription. I should have thought that it was quite obvious, especially in view of *Re Beard*, that such a trust would not be charitable; it might even be illegal. But the intention might be excellent. Consequently intention alone is not decisive, and, therefore, the court must obviously go into the question of benefit to the community. It is likely to do so with extreme caution. It is a truism that "public policy is an unruly horse," and the courts have always been most reluctant to enter into a discussion of, or to pronounce upon, the policy underlying matters of current controversy. I think that the real crux is to weigh the material disasters which, according to the evidence, would follow upon a total success of the society in attaining its objects, against the moral disasters which might be argued to follow from any increase in or avoidable continuance of wanton cruelty to animals under the colour of the practice of vivisection. It seems on the evidence before the court that in the present state of medical science the continuance of vivisection is for scientific purposes a necessity, and therefore I think that this decision is likely to stand. On the other hand I feel, with great respect, that the judgment of MacKinnon, L.J., goes further than was necessary for the decision, and may well not be adopted as correct in comparable cases. In that judgment, at p. 208, it is stated that the avowed objects of the society include among other things "opposition to the immunisation (by inoculation) of the members of the armed forces against typhoid" and "opposition to the immunisation of the civil population against diphtheria." These two remarkable objectives do not appear to be further discussed in the report, though they are mentioned at p. 188, and their connection with the main object of the society as stated at p. 187 ("to awaken the consciousness of mankind to the iniquity of torturing animals for any purpose whatever") is not apparent. I cannot understand how the funds of a society having such subsidiary objectives could possibly be described as devoted solely to charitable purposes, whatever its main objective was, and it is somewhat surprising that more stress apparently was not laid on them.

The practical moral to be drawn from *C.I.R.* v. *National Anti-Vivisection Society* seems to be that, in connection with bodies alleged to fall within Lord Macnaghten's fourth category of charities, the court is rather more ready than one would have supposed to receive evidence of the actual benefit or detriment to the community which comes in question. The whole matter is, however, ripe for discussion in the House of Lords.

The only other case about charities is *Re Simson* [1946] Ch. 299, a decision of Romer, J., on the question of "parish work." I discussed the earlier group of cases on this subject in the "Diary" of 1st September, 1945, the main case there discussed being *Farley* v. *Westminster Bank* [1939] A.C. 430, where it was held that gifts to a vicar and churchwardens "for parish work" were not charitable owing to the fact that the expression "parish work" was wide enough to include activities not purely ecclesiastical. In an earlier case, *Re Garrard* [1907] 1 Ch. 382, a gift to a vicar and churchwardens "to be applied by them in such manner as they shall in their sole discretion think fit" was held to be charitable. In *Re Simson* the words were "to the vicar of St. Luke's Church, Ramsgate, to be used for his work in the parish." This gift was held to be charitable, notwithstanding *Farley* v. *Westminster Bank*, on the ground that a gift to the vicar, without more, would have been charitable (*Re Garrard*), and that a gift to the vicar "to be used for his work" would still be charitable, and that the words "in the parish" did not extend the scope of the gift. While no doubt it is satisfactory that this particular gift was upheld, I venture to suggest that it is difficult to see the difference between a gift to the vicar and churchwardens "for parish work," and one to the vicar "for his work in the parish." The only real difference seems to lie in the mention of churchwardens, which apparently implies that clubs and other more or less secular activities which would be fatal to a gift in the former form are ascribable to the churchwardens and not to the vicar. But this suggestion surely is strange. Surely the churchwardens in most cases confine themselves, even more than does the vicar, to activities in connection with the church itself. I should hesitate to advise that a legacy in the form in *Re Simson* should be treated as charitable in another case without a further application to the court.

New life assurance business transacted by Equity & Law Life Assurance Society during 1946 consisted of 1,125 policies providing sums assured of £1,706,219 (net of reassurances); in the previous year 678 policies were issued providing sums assured of £1,048,003 (net of reassurances). The consideration for annuities granted during the year amounted to £1,132,451, compared with £1,237,721 in 1945.

As from 1st January, 1947, the rural district of Langport (Somerset) is included in the area covered by the rent tribunal set up for Weston-super-Mare and district.

The borough of Newcastle-under-Lyme and the urban districts of Alsager, Kidsgrove and Leek, have been included in the area covered by the rent tribunal set up for Stockport and district.

LANDLORD AND TENANT NOTEBOOK

W.A.E.C. CERTIFICATES: DURATION

A GOOD deal of useful authority on the effect of "certificates of need" granted by War Agricultural Executive Committees under para. (*g*) (ii) of Sched. I to the Rent, etc., Restrictions (Amendment) Act, 1933, was given us by *Pickford* v. *Mace* [1943] K.B. 623 (C.A.). But since then the decision in *Benninga* (*Mitcham*), *Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.) may have caused some of us to consider the problem exemplified by such a question as: could a farmer landlord obtain judgment for possession under the paragraph by producing a certificate which was, say, ten years old?

A careful perusal of the whole paragraph is desirable. It runs: "the dwelling-house *is* reasonably required by the landlord for occupation as a residence for *some person* engaged in his whole-time employment . . . or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, *and either* (i) the tenant was in the employment of the landlord or a former landlord, and the dwelling-house was let to him in consequence of that employment and he has ceased to be in that employment; *or* (ii) the court is satisfied by a certificate of the county agricultural committee . . . that *the person* for whose occupation the dwelling-house is required by the landlord is, or is to be, employed on work necessary for the proper working of an agricultural holding or as an estate workman," etc.

It will be observed that two of three sets of conditions must be shown to be fulfilled by any landlord asking for an order by virtue of the paragraph, and those set out in the first part must be proved whether the balance is to consist of those in sub-para. (i) or of those in sub-para. (ii). And while *Pickford* v. *Mace* had little to do with the first part, *Benninga* (*Mitcham*), *Ltd.* v. *Bijstra* substantially concerned that part and the first sub-paragraph.

The short facts of *Pickford* v. *Mace* were that the plaintiffs had let a house to the defendant in 1935; in 1941 they wanted a foreman for their farm and wanted the house as a residence for him and his family; they determined the tenancy, and in March, 1943, without having engaged a foreman conditionally or otherwise, obtained a certificate, which said: "The agricultural worker for whose occupation the cottage or dwelling-house now occupied by [the defendant] and known as . . . is required by [the plaintiffs] is to be employed on work necessary for the proper working of the agricultural holding known as . . ." Soon afterwards, they engaged a foreman, apparently without any condition as to obtaining a residence, and then brought their action. The county court judge considered that, in order to succeed, they must show that the certificate was issued in respect of some actual or prospective employee for whom the premises were required; the words "some person" and "the person", which I italicised above, in the opening part of and the second sub-paragraph of the paragraph, will indicate the line of reasoning: the two were considered to be identical. Allowing the appeal, the Court of Appeal, while appparently admitting the plausibility of this reasoning, pointed out that it would lead to great practical difficulties; a farmer might not be able to name a definite worker when he sought the certificate, and if he did the man might be replaced before the hearing of the action. The scheme of things required that the county court judge should be satisfied that the house was required by an employee or prospective employee, and be satisfied by the certificate about the nature of the work and the landlord's need for a worker. But the court did emphasise the "desirability" of the certificate qualifying the worker, though in the facts of the case before it this was unimportant, as the evidence had shown that a foreman was the proposed occupier all along.

In *Benninga* (*Mitcham*), *Ltd.* v. *Bijstra* the sequence of events was: in 1941 the plaintiffs let the defendant a house, in consequence of his employment with them. In December, 1944, they dismissed him. In February, 1945, they gave him notice to quit and at the same time arranged for his successor. In March they issued proceedings; in April the successor's employment began; in May the action came on, and the plaintiffs satisfied the judge that they wanted the house for the successor; whereupon he made an order. This time the appeal was dismissed. The argument advanced for the appellants was that the cause of action had not been complete when the plaint was issued. One way of answering this would have been to point to those authorities which show that the Acts "place a fetter upon the court, not upon the landlord" (*Salter* v. *Lask* (*No.* 1) [1924] 1 K.B. 754), whose cause of action is, technically at all events, the determination of the contractual tenancy and nothing more. But Morton, L.J., setting out the questions which the county court judge has to decide, deliberately used the same tense as that used in the Act, thus: *is* it reasonable to make an order; *is* the house reasonably required for occupation, etc.; *was* the defendant in the plaintiff's employ; *was* the house let to him in consequence of that employment; *has* he *ceased* to be in that employment; and upheld the decision on those lines.

At first sight, it might appear that there was some conflict between these two authorities; for if a court has to consider the state of affairs obtaining at the time of the hearing of the action, how can it obtain guidance from a certificate issued at an earlier date? But the answer is provided by a perusal of the paragraph as a whole and of the five issues set out by Morton, L.J. It will be seen that in *Benninga* (*Mitcham*), *Ltd.* v. *Bijstra*, what was decided was that the court must be satisfied, at the hearing, that the first set of conditions is then fulfilled, i.e., that the dwelling-house is then required by the landlord for occupation for, etc. And this would equally apply in an action in which the balance of the landlord's case was supplied by sub-para. (ii); nor did *Pickford* v. *Mace* profess to lay down that that question was not one for the judge when the landlord relies on an agricultural certificate of need. But the certificate, as was held long ago in *Taylor* v. *West* (1940), 84 SOL. J. 645 (C.A.), is conclusive as regards its contents; and while one may comment on the investing of mortals with powers of prevision, cavilling at the Legislature takes us nowhere. The certificate does not evidence reasonable requirement at the date of the hearing at all (see *Harris* v. *Brent* [1945] 1 All E.R. 386); so the conflict is not real. Consequently, a landlord can, in theory, succeed on the strength of a ten-year old certificate; but, as was pointed out in *Pickford* v. *Mace* itself, the landlord would have to prove that the house is required for an actual or prospective employee, that he has a house for that person, and "that the work on which he proposes to employ him is so and so," in the words of Lord Greene, M.R.

TO-DAY AND YESTERDAY

January 6.—The traditional Christmas prince at Lincoln's Inn was Le Prince d'Amour, and on Twelfth Night, 1600, in the course of his reign the Society performed a masque at court: "On Friday being Twelfth Day, 11 knights and 11 esquires, 9 masquers and 9 torchbearers went to court . . . When they came to the court the nine masquers like Passions issued out of a heart. All was fortunately performed and received gracious commendation."

January 7.—On 7th January, 1824, John Thurtell and Joseph Hunt were convicted at Hertford of the murder of William Weare and condemned to death by Mr. Justice Park. It had been a brutal killing in Gill's Hill Lane, a dark, lonely tunnel of a way near Aldenham, and the body had been thrown into Hill's Slough, a pond by the roadside near Elstree. Robbery was the motive and the victim and his murderers, with whom he had associated on familiar terms, were equally disreputable. Weare was a notorious gambler and sharper, while Thurtell and Hunt, though of respectable origin, had plunged deep into the low life of London. When sentence was passed Hunt hid his face in his handkerchief, while Thurtell listened attentively to the judge's

exhortations without change of countenance. Theodore Hook's lines on the tragedy are still remembered :—

" They cut his throat from ear to ear,
His brains they battered in ;
His name was Mr. William Weare,
He dwelt in Lyon's Inn."

January 8.—On 8th January, 1808, Sir Henry Russell, Chief Justice, pronounced a judgment at Calcutta in a case which attracted much attention. He condemned to death John Grant, a cadet of the East India Company, convicted of maliciously setting fire to a native's hut. He said : " The natives are entitled to have their character, property and lives protected ; and as long as they enjoy that privilege from us they give their affection and allegiance in return."

January 9.—The Inns of Court were always glad to honour eminent members though not lawyers. For example, on 9th January, 1667, the Gray's Inn benchers ordered " that the Lord John Seymour, son of the late Duke of Somerset, to be called to the bench and to be assistant thereto." He had been admitted in the previous October.

January 10.—On 10th January, 1664, Pepys noted " All our discourse to-night about Mr. Tryan's lately being robbed ; and that Colonel Turner, a mad, swearing, confident fellow . . . one much indebted to this man for his very livelihood, was the man that either did or plotted it ; and the money and things are found in his hand and he and his wife now in Newgate for it, of which we are all glad so very a known rogue he was." He was hanged.

January 11.—Next day, 11th January, Pepys noted the news " that fifteen are condemned for the late plot, by the judges at York." This was an abortive scheme for a rising against the restored monarchy. Some of the prisoners behaved insolently, one saying that in such a cause he valued his life no more than the judge did his handkerchief. Some of the convicted were executed at York, some at Leeds, and others elsewhere. One London printer who had worked with them was also executed and another pilloried. The rising was to have begun in Ireland, to have spread in England and then in Scotland.

January 12.—On 12th January, 1915, Miss Gladys Cooper, the actress, was awarded £1,200 damages for libel in an action against the *London Mail*.

Sir John Eldon Bankes

Few judges have had so interesting an ancestry as Sir John Eldon Bankes, who died recently at Soughton Hall, Flintshire, his family seat, nearly twenty years after resigning from the office of Lord Justice of Appeal. His mother was a daughter of Sir John Jervis, Chief Justice of the Common Pleas from 1850 to 1856. His grandmother was a daughter of Lord Eldon, Chief Justice of the Common Pleas from 1799 to 1801, and thereafter, save for a very brief interval, Lord Chancellor till 1827. It was this lady's husband who first brought the name of Bankes to Soughton Hall. He was a younger son of a family settled for over a century and a half in Dorset. His father, Henry Bankes, earned half a page in the Dictionary of National Biography as a Member of Parliament, a supporter of Pitt, a trustee of the British Museum and the author of a constitutional history of Rome. Henry's great-grandfather was Sir John Bankes, Chief Justice of the Common Pleas from 1641 to 1644. The son of a Cumberland merchant, he was the first to plant the family of Bankes in Dorset, purchasing Corfe Castle from the widow of Sir Edward Coke. The defence of the place against the Parliamentarian armies by his wife, Lady Mary Bankes, was one of the outstanding exploits of the Civil War, for both stood loyally by the King, and all his possessions, even to his books, which were in the power of the rebels were confiscated by them. Bankes was a distinguished figure in his day. No doubt we must discount the extravagant estimate of one admirer to the effect that he exceeded Bacon in eloquence, Ellesmere in judgment and Noy in law. Clarendon more soberly declares him " a man of great abilities and unblemished integrity." It was Noy whom in 1634 he succeeded as Attorney-General. About the same time Sir John Finch was displacing Sir Robert Heath as Chief Justice of the Common Pleas. These changes inspired the punning epigram :

" Noy's floods are past ; the Banks appear ;
The Heath is cropt ; the Finch sings there."

Bankes was a member of Gray's Inn and there his portrait is preserved.

His Grandfather

Lord Justice Bankes would have been hard put to it to combine the characteristics of all his legal ancestors : Bankes, the Civil War judge ; Eldon, the tenacious unbending Tory ; and Jervis, who was returned to the first Reform Parliament for the City of Chester as a zealous supporter of the Liberal Party. The passage of ninety years since his death has somewhat obscured his memory and it is strange to remember that he was still on the Bench when his grandchild, the late Lord Justice, was an infant. He was a distinct character. The son of a King's Counsel, he was early destined for the law, but for a while he preferred to take a commission in the Carabineers. He returned, however, to the Middle Temple, was called to the Bar in 1824 and first combined practice with law reporting and legal authorship. From 4th to 7th July, 1846, he was Solicitor-General. Then he succeeded Sir Thomas Wilde as Attorney-General. Overwork during the next four years shortened his life, though in 1850 he was relieved by his appointment as Chief Justice, at the early age of forty-eight. An incident in one case which he tried was long remembered. A young man of fortune had been fleeced by a gang of sharpers. One of the exhibits in the ensuing trial was a note-book containing a mass of apparently unintelligible initials and complicated gambling transactions. No one could make head or tail of it till Jervis explained it all. A pack of cards was produced which on the face of it was perfectly fair, but Jervis told the jury : " Gentlemen, I will engage to tell you, without looking at the faces, the name of every card in this pack." He then pointed out that on the backs, which were figured with wreaths of flowers in dotted lines, there was one particular small flower, the number and arrangement of the dots on which designated each card, unobtrusively but unmistakably.

COUNTY COURT LETTER

Determination of Standard Rent

In *Atter* v. *Atter*, at Grantham County Court, the claim was for (1) the determination of the standard rent of 64, Grantley Street, and of the amount which the defendant was legally entitled to charge, also (2) repayment of £52 8s. 8d. overcharged rent. The case for the plaintiff was that for two years until July, 1945, he had paid 18s. a week rent, which was 10s. 1d. more than could reasonably be charged, as the previous tenant had paid 7s. 11d. a week. It was impossible to trace the persons who were landlord and tenant on the 3rd August, 1914, but expert evidence was given by a valuer that, by comparison with eleven other houses, a reasonable rent would be 8s. a week. A rating officer of the corporation gave evidence of the rating valuation of the same properties. A submission was made that, as the plaintiff's tenancy had expired, the action was not maintainable. The submission was overruled, but a contention that the plaintiff had not made out his case was upheld. His Honour Judge Shove observed that, unless evidence was produced of what the actual rent of similar houses was in 1914, he had no power to say what the standard rent was or what the proper rent would be. Judgment was given for the defendant, with costs.

Mr. B. Goodfellow, solicitor, of Southport, Lancashire, left £41,097, with net personalty £40,313.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered, without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88–90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Adverse possession by wife as against husband

Q. Our client, Mrs. B, has been in uninterrupted possession of a leasehold dwelling-house for the past thirteen years. Her husband, Mr. B, purchased the property in 1920, the title deeds being in his name, and they lived together in the house until June, 1933, when Mr. B left his wife and has not since been seen or heard of. Has Mrs. B acquired a possessory title sufficient to enable her to dispose of the property ? Is it possible to obtain a title by adverse possession as between husband and wife ?

A. Although under certain circumstances we see no reason why a wife should not be able to establish adverse possession as against her husband, we doubt if in this case these circumstances exist. At what period did her possession become hostile to that of her husband ? May she not have remained in possession as his licensee at least until she was technically deserted (say, after three years) ? Has she been in possession under claim of title ? It seems highly doubtful. With such considerations as these in mind, we express the opinion that Mrs. B will not find it easy to satisfy a purchaser that she has a satisfactory title.

REVIEW

The Death Duties. By ROBERT DYMOND, assisted by R. K. JOHNS, LL.B. (Lond.). Tenth Edition. 1946. London: The Solicitors' Law Stationery Society, Ltd. 55s. net.

When Mr. Dymond published the first edition of his book in 1913, he stated in the Preface that he had endeavoured to give the essence of the law relating to the death duties in a compact form, so that it might be of practical use not only to the lawyer, but also to the layman and student. That object has evidently been in his mind when preparing each successive edition, with the result that the tenth edition is one of the most readable and informative of legal text-books. Although the previous edition was only published in 1942, new legislation and war-time conditions have made it necessary to make considerable changes in the text. This has called not only for revision, but for much rewriting, and the result is one of which the author can be proud.

It is unfortunate that the book was ready for press before the Finance Bill, 1946, was introduced, and before the publication of the conventions with certain foreign countries relating to the incidence of double estate duty. But the convention with the United States of America has been dealt with fully, and as the conventions with Canada and South Africa mainly follow the same lines, the explanation of the American convention has almost equal application. An addendum summarises the changes proposed by the Finance Bill and, with the exception that the increase from one to two years of the period within which gifts *inter vivos* for charitable purposes are vulnerable to estate duty did not become law, the summary is an accurate account of the Finance Act. The promised supplement to the book will provide a fuller treatment.

Particular mention must be made of the clear explanation of the complex law relating to transfers to companies. The Preface states that Mr. Johns is responsible for the section on controlled companies, and he is to be congratulated on the manner in which he has dealt with this difficult subject. He has succeeded in making this tangle of legislation and rules intelligible, and the practical examples which he provides disperse what doubts one may have after reading the main text.

Parts II and III, which deal with the subjects of Legacy and Succession Duties, give a complete and careful examination of those branches of the law of death duties. They guide on almost every conceivable topic, and there seems little risk of him going astray who reads with care and understanding.

One of the most necessary features called for by a book of this kind is a good Index. There is nothing more exasperating than an index which is not comprehensive or which contains numerous cross-references. But the Index is worthy of the book, and running, as it does, to over fifty pages of closely printed matter, there is little difficulty in finding the reference to the text where the required information will be found.

The diligent reader who plods through the three parts of this work must be left wondering how such a complexity of statute and case law can be allowed to exist in a civilised community. That consolidation should be a matter of prime importance is the opinion of most of us, but it is pleasing to read that such a well-known authority as Mr. Dymond emphasises that requirement. But until that be done, the book is indispensable, and no lawyer's office can be said to be fully equipped without a copy instantly to hand.

BOOKS RECEIVED

Guide to Company Law. Fourth Edition. By ROBERT WOLSTENHOLME HOLLAND, O.B.E., M.A., M.Sc., LL.D., of the Middle Temple, Barrister-at-Law. 1946. pp. xx and (with Index) 252. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

Green's Death Duties. Second Edition. By G. M. GREEN, LL.B. (Lond.), Solicitor, of the Estate Duty Office. 1947. pp. lxxxii, 973 and (Index) 72. London: Butterworth & Co. (Publishers), Ltd. 52s. 6d. net.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1945–46 Vol., part 15. London: Hamish Hamilton (Law Books), Ltd.

The British Year Book of International Law. 1945. Edited by Professor H. LAUTERPACHT. 22nd year of issue. pp. vi and (with Index) 341. London: Geoffrey Cumberlege, Oxford University Press. 27s. 6d. net.

The National Insurance Act, 1946. By DOUGLAS POTTER, M.A., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1946. pp. v and (with Index) 269. London: Butterworth and Co. (Publishers), Ltd. 21s. net.

NEW YEAR LEGAL HONOURS

VISCOUNTS

The Rt. Hon. STANLEY MELBOURNE BRUCE, C.H., F.R.S., Chairman, International Emergency Food Council. Called by the Middle Temple 1907.

The Rt. Hon. WILLIAM ALLEN, Baron JOWITT, K.C., Lord High Chancellor of Great Britain. Called by the Middle Temple 1909, and took silk 1922.

BARONS

Mr. GEORGE MORGAN GARRO-JONES, M.P., Parliamentary Secretary, Ministry of Production, 1942–45. Called by Gray's Inn 1922.

The Rt. Hon. Sir GEOFFREY LAWRENCE (Lord Justice Lawrence), one of the Lords Justices of Appeal. Called by the Inner Temple 1906, and took silk 1925.

PRIVY COUNCILLORS

Mr. CLEMENT EDWARD DAVIES, K.C., M.P., Chairman, Liberal Parliamentary Party. Called by Lincoln's Inn 1909, and took silk 1926.

Mr. WILLIAM GLENVIL HALL, M.P., Financial Secretary to the Treasury. Called by Gray's Inn 1933.

Mr. ARTHUR HENDERSON, K.C., M.P., LL.B., Parliamentary Under-Secretary of State for India and for Burma. Called by the Middle Temple 1921, and took silk 1939.

The Hon. IAN ALISTAIR MACKENZIE, K.C., Minister of Veteran Affairs, Canada.

KNIGHTS BACHELOR

Lt.-Col. NEVILLE ANDERSON, Presiding Special Commissioner of Income-Tax, Board of Inland Revenue. Called by the Inner Temple 1903.

The Hon. Mr. Justice NORMAN GEORGE ARMSTRONG EDGLEY, I.C.S., Judge of the Calcutta High Court. Called by the Inner Temple 1924.

Mr. HENRY NAZEBY HARRINGTON, Solicitor to the Board of Customs and Excise.

Mr. ALFRED HERBERT HOLLAND, Chief Master in the Chancery Division, Supreme Court of Judicature. Admitted 1904.

Mr. WILFRID WALTER NOPS, Clerk of the Central Criminal Court. Called by the Middle Temple 1912.

Mr. FRANCIS JOSEPH SOERTSZ, Senior Puisne Judge, Ceylon. Called by Gray's Inn 1927.

Mr. WALTER ADDINGTON WILLIS, Crown Umpire, Unemployment Insurance. Called by the Inner Temple 1889.

ORDER OF THE BATH

C.B.

Mr. G. PROBY, lately Principal Clerk, Judicial Department, House of Lords. Called by the Inner Temple 1920.

ORDER OF ST. MICHAEL AND ST. GEORGE

K.C.M.G.

The Hon. HUMPHREY FRANCIS O'LEARY, Chief Justice, New Zealand.

ORDER OF THE BRITISH EMPIRE

C.B.E.

Mr. R. C. BRIDGES, lately Assistant Solicitor, Board of Trade.

Mr. J. B. STONEBRIDGE, Assistant Legal Adviser and Solicitor, Ministry of Agriculture and Fisheries. Called by Gray's Inn and the Middle Temple 1914.

C.B.E. (HONORARY)

Mr. MAJID BEY ABDUL HADI, Puisne Judge, Supreme Court, Palestine.

O.B.E.

Mr. D. C. BARTY, District Magistrate, Hyderabad, Sind.

Mr. A. J. CLAXTON, British Advocate, Sudan Government. Called by Lincoln's Inn 1907.

Mr. C. A. HIGGINS, Senior Legal Assistant, Office of H.M. Procurator-General and Treasury Solicitor. Called by the Inner Temple 1911.

Mr. T. C. S. KEELY, Assistant Master, Supreme Court of Judicature.

Mr. A. J. LOVERIDGE, Judicial Adviser, Gold Coast. Called by the Middle Temple 1932.

Mr. D. F. MORGAN, Legal and Parliamentary Secretary, Imperial Headquarters, Boy Scouts Association. Admitted 1911.

Mr. R. J. MORTON, Attorney-General, Southern Rhodesia.

Mr. LOUIS PHEASEY, Superintending Examiner, Patent Office, Board of Trade. Called by the Middle Temple 1922.

Mr. E. STAINES, Custodian of Enemy Property, retired Registrar, Superior Courts, Malta.

NOTES OF CASES

COURT OF APPEAL

Roberts *v.* Jones

Scott, Bucknill and Somervell, L.JJ.

12th November, 1946

Landlord and tenant—Rent restriction—Construction of house for rural worker—Subsequent repayment of grant towards construction—Lease at higher rent to new tenant—Standard rent—Housing (Rural Workers) Act, 1926 (16 & 17 *Geo.* 5, *c.* 56), *s.* 1—*Rent and Mortgage Interest Restrictions Act*, 1939 (2 & 3 *Geo.* 6, *c.* 71), *s.* 3 (2), *Sched.* I.

Appeal from a decision of Judge Evans, K.C., sitting at Caernarvon County Court.

The defendant landlord in 1937 spent some £450 on the complete reconstruction of a house, receiving towards the cost a grant of £100 through the county council under s. 1 of the Housing (Rural Workers) Act, 1926. In December, 1938, the house was let to a rural worker at 7s. 6d. a week. In March, 1941, it became unoccupied, and on 25th May, 1941, the landlord, having repaid the £100 to the county council, let the house to the plaintiff at 17s. 6d. a week. The county court judge found as a fact that the house became in effect a new house in consequence of the reconstruction in 1937. It was before March, 1941, excluded from the operation of the Rent Restriction Acts by virtue of s. 3 (2) (*c*) of the Act of 1939, whereby the principal Acts were not to apply to any house falling, as did the house in question, under s. 128 of the Housing Act, 1936. The house came outside the operation of the Act of 1926 on the landlord's repayment of the grant, and thereupon became subject to the Rent Restriction Acts. By Sched. I to the Act of 1939, amending s. 12 of the principal Act of 1920, the standard rent of a house means the rent at which it was let on 1st September, 1939, or, in the case of a house which was first let after that date, the rent at which it was first let. The county court judge, while of opinion that on 1st September, 1939, when the Act of 1939 came into force, the house was exempt from the Rent Restriction Acts, did not accept the argument advanced for the landlord that the rent to be taken as determining the standard rent was the rent being paid when the house became free from the operation of the Act of 1926 and came once more within the Rent Restriction Acts. In his opinion, the standard rent of the house must be the rent at which it was let on 1st September, 1939, in accordance with the Act of 1939, and the rent of 7s. 6d. was rightly taken as the standard rent, being the rent at which the house "was let" on 1st September, 1939. The landlord appealed.

SCOTT, L.J., said that if the rent of the house, from the point of view of the Rent Restriction Acts, was 7s. 6d. a week on 1st September, 1939, that was its standard rent. If, on the other hand, the effect of the Act of 1926 was to prevent the Rent Restriction Acts from applying to a house within that Act, the rent of 17s. 6d. was properly demanded by the landlord. The question was whether s. 12 of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (as amended by the Act of 1939), with its definition of "standard rent," compelled the court to say that the rent of 7s. 6d. was the criterion for determination of the standard rent. If a house let at 7s. 6d. a week under the Act of 1926 was to be regarded as coming within the Rent Restriction Acts, 7s. 6d. would be the criterion, but if the Rent Restriction Acts referred only to the rent of a dwelling-house which was a free house, so that the rent then being paid would, *prima facie*, afford a criterion, then 17s. 6d. was the criterion to be taken here for determining the standard rent. If the house was not a free house on 1st September, 1939, then in his (his lordship's) opinion, the court could not have regard to the time when 7s. 6d. was the rent, but must have regard only to the rent of 17s. 6d., which was the first rent of the house to be freely agreed between the parties after the house, as a new house, became free from the restrictions of the Act of 1926, and came within the Rent Restriction Acts. The case raised a question of first principle on which there was no direct authority. The Rent Restriction Acts imposed a status on a house. In the same sense the Housing (Rural Workers) Act, 1926, imposed such a status. That necessarily led to the conclusion that the Rent Restriction Acts were not intended to apply to a house the rent of which was fixed under the Act of 1926. The Rent Restriction Acts were general legislation, and the Act of 1926 was special legislation. That interpretation was, in his opinion, declared to be right by the express exclusion by s. 3 (2) (*c*) of the Act of 1939 of certain houses, including that in question, from the operation of the Rent Restriction Acts. The county court judge was accordingly wrong in holding that the Act of 1939 made it obligatory on him to take the artificial rent of 7s. 6d. fixed under the Act of 1926 as the rent at which the house was let for the purposes of the Rent Restriction Acts. The appeal would be allowed.

BUCKNILL and SOMERVELL, L.JJ., gave judgment agreeing.

COUNSEL: *Dare*; *Krikorian*.

SOLICITORS: *Jaques & Co.*, for *Ellis Davies & Co.*, Caernarvon; *Carter, Vincent & Co.*, Caernarvon.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

***In re* Arno; Healey *v.* Arno**

Morton, Somervell and Cohen, L.JJ.

3rd December, 1946

Will—Construction—Annuities directed to be paid without deduction of income tax up to 5s. in the £—Whether annuitants entitled to retain reliefs.

Appeal from Roxburgh, J. (90 SOL. J. 370).

The testator, by his will, dated 31st March, 1937, gave a number of annuities, which he directed should "be paid without deduction of income tax up to a maximum of 5s. in the pound." The testator died in May, 1937. This summons was taken out to have the effect of the direction determined. Roxburgh, J., held that the annuitants were entitled to retain for their own benefit the whole of any reliefs by way of repayment of income tax in respect of the annuities. The residuary legatees appealed.

MORTON, L.J., said that, construing the will apart from authority, he thought the testator intended that the trustees should wholly indemnify an annuitant against the income tax referable to his annuity in each year in which the standard rate was 5s. or less, and, if in any year the standard rate of income tax exceeded 5s., the trustees should partially indemnify him. The question was clearly stated by Uthwatt, J., in *In re Williams* [1945] Ch. 320; 89 SOL. J. 339, where he said "That question"—that was the question of construction to be determined—"is in substance whether the reference to income tax is a reference to the standard rate of income tax as an arithmetical factor in the calculation of the gross amount of the annuity given by the will, or whether the provision as to income tax merely indemnifies the annuitant against that part of the annuitant's income tax (other than sur-tax) which is properly referable to the annuity. If construed in the former sense, the actual income tax ultimately suffered by the owner of the annuity does not enter into the picture. Tax at the standard rate is deducted from the gross amount resulting from the calculation and the annuitant receives £*x* in cash and the income tax referable to the gross amount has been paid for his account." Concentrating on that question, he could not find that the reference to income tax in this will could be said to be a reference to the standard rate of tax merely as an arithmetical factor in the calculation of the gross amount of the annuity given by the will. The reasoning in *In re Pettit* [1922] 2 Ch. 765; 66 SOL. J. 667, had been approved by the Court of Appeal in *In re Maclennan* [1939] 1 Ch. 750; 83 SOL. J. 438. The authorities were reviewed in *In re Tatham* [1945] Ch. 34; 89 SOL. J. 407. The position where the will directed not a complete indemnity but a partial indemnity was considered by Romer, J., in *In re Bates* [1946] Ch. 83; 89 SOL. J. 531, where he held that the *Pettit* principle applied. *In re Bates*, *supra*, was rightly decided. He was unable to agree with the decision of Roxburgh, J. The appeal should be allowed.

SOMERVELL and COHEN, L.JJ., agreed in allowing the appeal.

COUNSEL: *W. G. H. Cook*; *Cyril King*, K.C. and *L. M. Jopling*; *Neville Gray*, K.C. and *Wilfrid Hunt*; *T. A. Burgess*.

SOLICITORS: *Eagleton & Sons*; *Field, Roscoe & Co.* for *Hillman, Burt & Warren*, Eastbourne.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

KING'S BENCH DIVISION

Bracegirdle *v.* Oxley

Lord Goddard, C.J., Humphreys, Lewis, Cassels and Denning, JJ.

18th December, 1946

Road Traffic—Speed dangerous to public "having regard to all the circumstances"—Construction—Road Traffic Act, 1930 (20 & 21 *Geo.* 5, *c.* 43) *s.* 11 (1).

Case stated by Bucklow (Cheshire) justices.

At a court of summary jurisdiction sitting at Knutsford an information was preferred by a police superintendent charging a heavy-motor driver with contravening s. 11 (1) of the Road Traffic Act, 1930, in that on 4th January, 1946, at Peover, he drove a heavy motorl-orry at a speed dangerous to the public having regard to all the circumstances. At the hearing of the information the following facts were established: the weight of the lorry in question was over six tons, and it was carrying a load of eight tons. The maximum speed allowed by law for that class of vehicle was twenty miles an hour, and it was driven for one mile at a speed varying between forty and forty-four miles an hour. It was driven on the correct side of the road, and

overtook one brewer's lorry, being driven slowly, on a right-hand bend, no signal of intention to overtake being given. There was no other traffic on the road, and no member of the public was actually placed in danger. The road was a class A wide main road, carrying a heavy volume of traffic. The stretch covered by the police test included one converging road, two bends, five farm entrances, and one narrow bridge. When the driver had been overtaken and told of the test he said that he had been talking and had no speedometer. The justices dismissed the information, holding that, in spite of the exceeding of the speed limit, the driver's speed, in view of the type of the road, and the situation of the test, was not in fact dangerous to the public which actually was, or might reasonably have been expected to be, on the road, and that there was nothing to distinguish the case from any case of exceeding the speed limit. The superintendent appealed.

LORD GODDARD, C.J., said that it was remarkable that the justices in certain parts of Cheshire seemed to hold rather strange views on the question of dangerous driving, and to pay little attention to the decisions of the court. Both *Kingman* v. *Seager* ([1938] 1 K.B. 397; 81 SOL. J. 903) and *Durnell* v. *Scott* ((1939), 83 SOL. J. 196), referred to by counsel, had come from Cheshire, and in both the court had remitted the case with a direction to convict. It was difficult, without going into small detail, to see any distinction between the present case and those two cases. The court sat, not as a general court of appeal from justices, as did courts of quarter sessions, but only to review justices' decisions on points of law, being bound by the facts which they found, provided always that there was evidence on which the justices could reach their conclusion. He (his lordship) would have no hesitation in saying that perverse decisions of justices were in the same situation as decisions reached without evidence to support them. The judgments in *Kingman* v. *Seager, supra*, and *Durnell* v. *Scott, supra*, made it clear that the Divisional Court sent those cases back because the justices' decisions were ones to which no reasonable bench could come.

There were some expressions of opinion in the judgments in *Kingman* v. *Seager, supra*, which went rather too far unless the circumstances of that case were clearly borne in mind— expressions which might be taken as meaning that, wherever justices found excessive speed, they must find dangerous driving. He (his lordship) did not think that any of the members of the court in that case had meant to lay down that principle, for, apart from any dangers in the surface of the road, there might be circumstances in which it was safe to drive at any speed, for example, across Dartmoor or the Yorkshire moors, where the driver could see for miles ahead and there was no traffic in sight. Those judgments, he thought, meant that, if one took into account all the circumstances, speed alone might be a decisive element in the danger. On certain roads, for example, roads leading out of London, it was possible to drive at a speed which must in itself be a danger. Here, with a heavy lorry hurtling along at over forty miles an hour, giving no signals, charging a narrow bridge, the justices proceeded to set out their decision in the terms used by the justices in *Durnell* v. *Scott, supra*. Justices must remember that they were inferior courts, and under the jurisdiction of the Divisional Court. If they persisted in disregarding decisions of that court which could not be distinguished from the cases before them, they were guilty of a grave dereliction of duty. The Divisional Court in the present case took the same view as in *Kingman* v. *Seager, supra*, and *Durnell* v. *Scott, supra*. It was impossible to say that any reasonable-minded bench would have arrived at the decision of the justices in the present case. The appeal would be allowed and the case remitted to the justices with a direction to convict.

The other learned judges concurred in allowing the appeal.

HUMPHREYS, J., gave judgment agreeing.

LEWIS and CASSELS, JJ., agreed.

DENNING, J., gave judgment agreeing.

COUNSEL: *S. R. Edgedale* for the superintendent. The driver did not appear and was not represented. *H. L. Parker* appeared on the invitation of the court as *amicus curiæ* to argue in support of the justices' decision.

SOLICITORS: *Gregory Rowcliffe & Co.*, for *Clerk to Cheshire County Council*; *Treasury Solicitor*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

R. *v.* Bodmin Justices; *ex parte* Mc Ewen

Lord Goddard, C.J., Humphreys and Lewis, JJ.

20th December, 1946

Justices—Certiorari—Witness as to character of person charged—Subsequent interview in justices' private room before decision announced—Conviction quashed.

Application for an order of *certiorari* to remove into the King's Bench Division for the purposes of its being quashed a conviction by justices of the Petty Sessional Division of Bodmin recorded against the applicant on 9th October, 1946.

The applicant, a private in the Army, was charged before the justices with unlawfully wounding a fellow soldier, one Millington, and pleaded "Guilty." At the conclusion of the case for the defence the chairman of the justices called the officer referred to to give evidence. The officer thereupon said, in an unsworn statement, that the applicant was a good worker, that since the commission of the offence charged he had given no trouble, and that he (the officer) could say a lot more, but thought that he had better not. The justices then retired to their private room. Some ten minutes later the chairman came to the door of the room and called the officer in. He remained there, with the door closed, for some five minutes. After a further five minutes, the justices returned to the bench, and the chairman stated that the applicant would be imprisoned for six months. Objection was made on his behalf that the defence had had no opportunity of cross-examining the officer. It was submitted that, in those circumstances, the application should be granted. It was argued, in opposition to the application, that the justices had already reached their decision when they called the officer in, that he had been called in for one reason only, namely, because one of the justices, who had for five years been army welfare officer for Bodmin, had raised the question, after the justices had retired, whether the applicant's imprisonment would result in the Army's refusing to have him back, and he was particularly anxious to ensure if possible that the applicant should, after serving his sentence, have the benefit of Army training and discipline; and that, the justices having already reached their decision, and having acted from no improper motive whatever, it would be going further than the court had ever gone before to order the conviction to be quashed in such circumstances.

LORD GODDARD, C.J., said that the applicant had first been charged with wounding Millington with intent to cause him grievous bodily harm, an offence punishable with penal servitude for life. Apparently, before the facts had been gone into, the prosecution and the defence both asked the justices to deal with the case as one of unlawful wounding. The matter had arisen out of a disturbance which occurred in the barrack room in the course of which the applicant stabbed Millington with his bayonet. Millington's life had been in danger, and no doubt it was because he had in fact recovered that the justices had thought it a proper case in which to reduce the charge to the misdemeanour of unlawful wounding and consented to deal with the case under the Criminal Justice Act, 1925. It was not intended that justices should deal with a case of that sort by reason of the Act of 1925. They must remember that they must consider such a matter judicially. They were not bound to entertain it because the prosecution wanted it settled without the necessity of going to assizes, where the case should undoubtedly have been sent. The court could not, however, interfere on that ground: it could only express the greatest disapproval of the justices having so acted. The applicant's company officer, present in court, had given him not a bad character. By inviting the officer into their room, whether for one minute or for five minutes did not matter, the justices were interviewing a man who had been in court, and who had given information in the case, in the absence of the accused man or his advocate. That could not possibly be justified, and it was immaterial that the justices had had no sinister or improper motive, and had sent for the officer in the interests of the applicant. It had been said in that court time and again that justice must not only be done but must manifestly be seen to be done. If a witness was interviewed in the absence of a prisoner, justice was not being seen to be done. The result was that the conviction must be quashed, and that a man who ought to have served a sentence would go free.

HUMPHREYS and LEWIS, JJ., concurred.

COUNSEL: *C. Besley*; *Astell Burt* (justices); *H. E. Park* (police).

SOLICITORS: *Robbins, Olivey & Lake* for *Thrall, Llewellyn and Spooner*, Truro; *Barlow, Lyde & Gilbert*, for *Stephens & Scown*, St. Austell.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

Sullivan *v.* Sullivan

Lord Merriman, P., and Byrne, J. 28th October, 1946

Justices (Matrimonial jurisdiction)—Procedure—Appeal to High Court—Justices' duty to furnish reasons.

Appeal from a decision of Luton justices.

A wife took out two summonses against her husband for neglect to maintain and for desertion. The justices dismissed both summonses without calling on the husband to answer. The justices gave no reasons for their decision in court, and,

the wife having given notice of appeal, the justices' clerk informed her solicitors that no reasons had been given, but said that he thought it " clear from the evidence what their reason was."

LORD MERRIMAN, P., said that he hoped that the general observations which he was about to make would receive sufficient publicity to ensure their reaching justices' clerks throughout the country. This was the third time during the hearing of the present Divisional Court list that the court had been presented with words similar in effect to those used by the justices' clerk here, in response to the court's demand for a statement of the reasons for justices' decisions. The court had insisted repeatedly for many years that it was the duty of justices' clerks, not merely to take a proper note of the evidence, but also, in the event of an appeal, to give the Divisional Court a statement of the reasons for the justices' decision. Justices were entitled to make or refuse an order without giving reasons at the time of the decision, but a proper statement of the reasons for their decision was necessary in the event of an appeal. There should never be any difficulty in giving such a statement, for justices, unlike judges, could give a decision without formulating to themselves at the time the reasons on which the decision was based. It was, therefore, a defiance of the Divisional Court for clerks to justices to present the court with the mere statement that the justices had given no reasons in court. He (his lordship) wished to say plainly that if, after the present warning, the court were again treated in such a way, it might have to consider what powers it had to ensure that parties were not put to unnecessary expense through such dereliction of their duties by clerks to justices. The present case was a glaring example of the inconvenience caused. The court would not decide the case, but would send it back for hearing by a tribunal which would carry out its duties properly.

BYRNE, J., agreed.

COUNSEL: *Elborne; H. J. Phillimore.*

SOLICITORS: *Lathom & Co.; Machin & Co.*, Luton.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Whitley *v.* Whitley

Barnard, J. 22nd November, 1946

Husband and wife—Divorce—Spouse incurably of unsound mind—Treatment as " temporary patient "—Whether " in pursuance of any order . . . "—Treatment as voluntary patient immediately following—" Continuous care and treatment "—Right to divorce—Matrimonial Causes Act, 1937 (1 *Edw. 8 and* 1 *Geo. 6, c.* 57), *ss.* 2 (*d*), 3.

Petition for divorce.

The husband petitioner and his wife were married in February, 1936. Shortly after the birth of the child of the marriage in July, 1936, the wife showed symptoms of mental disorder. In December, 1936, on his application, she was admitted to a mental hospital as a temporary patient. After six months she was discharged relieved, but was at once re-admitted as a voluntary patient, remaining in the hospital thereafter. Barnard, J., found as a fact that she was incurably of unsound mind. The husband based his petition on the ground that his wife was incurably of unsound mind and had been continuously under care and treatment for a period of five years immediately preceding the presentation of the petition. The wife, by her guardian *ad litem*, the Official Receiver, denied that she was incurable or that she had been continuously under care and treatment for the necessary five years. By s. 2 (*d*) of the Matrimonial Causes Act, 1937, if the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition, the petitioner has grounds for divorce. Section 3 of the Act defines " care and treatment " as existing while the respondent " is detained in pursuance of any order or inquisition under the Lunacy and Mental Treatment Acts, 1890 to 1930," or " while he is receiving treatment as a voluntary patient under the Mental Treatment Act, 1930, being treatment which follows without any interval a period of detention," in pursuance of an order or inquisition under the Acts of 1890 to 1930. (*Cur. adv. vult.*)

BARNARD, J., said that it was argued for the husband that his application to have his wife received as a temporary patient was an order under the Acts of 1890 and 1930. It had to be remembered that that application did set the machinery of those Acts in motion. The form of application, however, made use of the word " request," and counsel for the husband was unable to point to any form under the Act of 1890 which used the word " request," the words variously used being " order," " authorise " or " direct." The object of the Act of 1930 was to make it possible for mental patients to receive treatment without the order and certification which had previously been necessary. It was clear that, under the Act of 1937, no matter how long a respondent might remain a voluntary patient, his doing so could not amount to " care and treatment " unless preceded directly by an " order " under the Acts of 1890 and 1930. In s. 5 of the Act of 1930, which concerned temporary treatment without certification, the word " order " occurred for the first time in s. 5 (14), and then only in reference to the discharge of the patient. Counsel for the husband relied on *Benson* v. *Benson* [1941] P. 90, where a direction by the Board of Control that a temporary patient should receive a further three months' treatment, before the end of which she was admitted into another hospital as a voluntary patient, was an order under the Acts of 1890 and 1930. Those facts were distinguishable from the present. He (his lordship) felt bound to construe s. 2 (*d*) of the Act of 1937 strictly, as had been the view of the Court of Appeal in *Murray* v. *Murray* [1941] P. 1, where the appellant had been defeated by a technical failure to observe the machinery laid down by the Acts of 1890 and 1930. Lord Greene, M.R., while describing the case as one of great hardship, said that, the Legislature having laid down the stringent test in the Act of 1937 for determining whether a person was under care and treatment, the measures laid down by the Acts of 1890 and 1930 must be strictly carried out. It was argued for the husband here that it would be odd for the Legislature to provide that care and treatment as a voluntary patient should count as part of the necessary five years' care and treatment, if preceded by an order, but to exclude care and treatment as a temporary patient in the absence of a preceding order, having regard to the fact that a temporary patient could not, as a voluntary patient could, express a wish to be treated. It was difficult to visualise how detention as a temporary patient could ever follow detention under an order, for either the patient improved so as to be able to be treated as a voluntary patient, or he did not improve, in which case the order for detention would not be discharged. Possibly there was a defect in the Act of 1937 and the word " temporary " should appear in s. 3 (*b*) as well as the word " voluntary," but he (his lordship) could only construe the Act as he found it. This wife was undoubtedly detained, and properly detained, as a temporary patient under s. 5 of the Act of 1930; but, in his opinion, she was not detained in pursuance of any order under the Acts of 1890 to 1930. The petition must accordingly be dismissed. Leave to the husband, as a poor person, to appeal.

COUNSEL: *Tolstoy; Stuart Horner.*

SOLICITORS: *D. Herbert Jones; Official Solicitor.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

OBITUARY

HON. J. B. M. BAXTER

The Hon. John Babington Macaulay Baxter, K.C., D.C.L., Chief Justice of New Brunswick since 1935, died recently, aged seventy-eight.

MR. H. C. BOWLING

Mr. Harry Clifford Bowling, solicitor, of Messrs. Clifford Bowling & Co., solicitors, of Leeds, died on Friday, 27th December, aged seventy-seven. He was admitted in 1891 and had been Official Receiver for the Leeds district for thirty-one years until 1945.

MR. D. MATHEWS

Mr. Douglass Mathews, solicitor, of Messrs. Wood & Sons, solicitors, of St. Andrew's Hill, E.C.4, died recently, aged seventy-six. He was admitted in 1894.

MR. W. W. PAINE

Mr. William Worship Paine, solicitor, a former director of Lloyds Bank, died on Christmas Day, aged eighty-five.

MR. E. RANSOM

Mr. Edward Ransom, solicitor, of Messrs. Ransom & Sons, solicitors, of Sudbury, Suffolk, died recently. He was admitted in 1892.

MR. H. J. SPENCER

Mr. Harold John Spencer, solicitor, of Messrs. J. J. Spencer and Son, solicitors, of Nottingham, died on Thursday, 26th December, aged fifty-four. He was admitted in 1914.

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1946

No. 2198. **Coal Industry Nationalisation** (Superannuation) Regulations. December 20.

No. 2176. **Compensation of Displaced Officers** (War Service) (Electricity Undertakings) Order. December 21.

No. 2202. **Diplomatic Privileges** (General Amendment) Order in Council. December 21.
No. 2169. **Labelling of Food** Order. December 19.
No. 2157. **Private Legislation Procedure** (Scotland) General Orders. December 5.
No. 2170. **Provisional Order, Scotland** (Scale of Costs) Order. December 9.
No. 2168. **Safeguarding of Industries** (Exemption) (No. 6) Order. December 20.
No. 2173. **Supplies and Services** (Transitional Powers). Order in Council revoking Regulation 71A of the Defence (General) Regulations, 1939. December 21.
No. 2174. Supplies and Services (Transitional Powers). Order in Council revoking and amending certain Regulations of the Defence (General) Regulations, 1939. December 21.
No. 2175. Supplies and Services (Transitional Powers), Isle of Man. Order in Council revoking Regulations 47A and 47AC of the Defence (General) Regulations (Isle of Man), 1939, etc. December 21.
No. 2091. **Tithe** (Copies of Instruments of Apportionment) Rules. November 30.
No. 2138. **Town and Country Planning** (Airfields) (Interim Development) Direction (No. 2). December 16.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

COURT PAPERS

SUPREME COURT OF JUDICATURE

HILARY SITTINGS, 1947

HIGH COURT OF JUSTICE—CHANCERY DIVISION

Mr. Justice VAISEY

Such business as may from time to time be notified.
Mondays—Companies Business.

GROUP A

Mr. Justice ROXBURGH

Mondays—Chambers Summonses (Group A).
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.

Mr. Justice WYNN-PARRY

Mr. Justice WYNN-PARRY will sit for the disposal of the Witness List.

GROUP B

Mr. Justice EVERSHED

Mr. Justice EVERSHED will sit for the disposal of the Witness List.
Mondays—Chambers Summonses (Group B).

Mr. Justice ROMER

Mondays—Bankruptcy Business.
Tuesdays—Motions, Short Causes, Petitions, Procedure Summonses, Further Considerations and Adjourned Summonses.
Wednesdays—Adjourned Summonses.
Thursdays—Adjourned Summonses.
Fridays—Motions and Adjourned Summonses.
Lancashire Business will be taken on Thursdays, 16th and 30th January, 13th and 27th February, 13th and 27th March.
Bankruptcy Motions and Bankruptcy Judgment Summonses will be heard on Mondays, 20th January, 3rd and 17th February, 3rd and 17th March.
A Divisional Court in Bankruptcy will sit on Mondays, 27th January, 10th and 24th February, 10th and 24th March.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION

ROTA OF REGISTRARS IN ATTENDANCE ON

Date.	Emergency Rota	Appeal Court I	Mr. Justice Vaisey
Mon., Jan. 13	Mr. Andrews	Mr. Farr	Mr. Blaker
Tues., ,, 14	Jones	Blaker	Andrews
Wed., ,, 15	Reader	Andrews	Jones
Thurs., ,, 16	Hay	Jones	Reader
Fri., ,, 17	Farr	Reader	Hay
Sat., ,, 18	Blaker	Hay	Farr

	Group A		Group B	
Date.	Mr. Justice Roxburgh *Non-Witness.*	Mr. Justice Wynn-Parry *Witness.*	Mr. Justice Evershed *Witness.*	Mr. Justice Romer *Non-Witness*
Mon. Jan. 13	Mr. Hay.	Mr. Reader	Mr. Andrews	Mr. Jones
Tues., ,, 14	Farr	Hay	Jones	Reader
Wed., ,, 15	Blaker	Farr	Reader	Hay
Thurs., ,, 16	Andrews	Blaker	Hay	Farr
Fri., ,, 17	Jones	Andrews	Farr	Blaker
Sat., ,, 18	Reader	Jones	Blaker	Andrews

NOTES AND NEWS

Honours and Appointments

The King has appointed the Hon. PHANI BHUSAN CHAKRAVARTI to be a Judge of the High Court in Calcutta in the room of the Hon. Sir Syed Nasim Ali.

The following appointments in the Colonial Legal Service are announced: Mr. G. G. BRIGGS, to be Crown Counsel, Nigeria; Mr. T. W. JONES, to be Assistant Registrar of Titles and Conveyancer, Uganda; Mr. W. A. BLAIR-KERR, to be Magistrate, Hong Kong; Mr. M. ROWE, to be Crown Counsel, Kenya; Mr. T. A. BROWN, Solicitor-General, Kenya, to be Puisne Judge, Malaya; Mr. R. MOOR, Assistant Legal Adviser, Malaya, to be Puisne Judge, Malaya; Mr. T. D. Wallace, Assistant Legal Adviser, Malaya, to be Attorney General, North Borneo. The following appointments are also announced: Mr. A. C. BRAZAO, Crown Counsel, British Guiana, to be Legal Draughtsman, British Guiana; Mr. J. W. B. CHENERY, Judge, Bridgetown Petty Debt Court, Barbados, to be Registrar, Barbados; Mr. G. L. TAYLOR, Registrar, Barbados, to be Judge of the Assistant Court of Appeal, Barbados.

Mr. STEPHEN F. KING, Deputy Town Clerk of Hastings, Sussex, since 1935, has been appointed Clerk and Solicitor to the Orpington (Kent) Urban District Council and takes up his duties there on 1st April. He was admitted in 1926.

Mr. Justice CASSELS has been elected Treasurer of the Middle Temple for 1947.

Professional Announcements

Messrs. WINDYBANK, SAMUELL & LAWRENCE announce the removal of their offices on 23rd December, 1946, from 15, George Street, Mansion House, E.C.4, to 6, 7 & 8, Clements Lane, Lombard Street, E.C.4 (Tel. Mansion House 7225). Mr. A. L. Samuell, who has hitherto practised alone under that name, has taken into partnership, as from 1st January, Mr. W. SCOTT CLARK, the senior member of the firm of Lindsay, Greenfield and Masons, of the same address. The practices of the two firms are not being amalgamated but will continue to be carried on separately in the same offices.

Messrs. FRESHFIELDS, of Princes Street, E.C.2, have taken into partnership Mr. JOHN F. TURING and Mr. H. M. DICKIE, both of whom have been associated with the firm for many years.

Messrs. RAPER & Co., of 55, West Street, Chichester, and High Street, Selsey, Sussex, announce that as from 1st January, 1947, they have taken into partnership Mr. JACK THOMPSON. The practice will be continued by Mr. Frederick Gould Standfield, Mr. Harry Rodney Underhill, LL.B. and Mr. Jack Thompson, and the firm name will remain unchanged.

Notes

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

Sir HARRY G. PRITCHARD has resigned his seat on the Board of The Solicitors' Law Stationery Society, Limited, and his son, Mr. H. WENTWORTH PRITCHARD, has been elected a Director as from the 1st January, 1947.

The Recorder of Stamford has fixed the next Quarter Sessions for the borough of Stamford to be held on Wednesday, 29th January, 1947, at 11.30 a.m.

The sixty-third rent tribunal in England has been set up to cover the following areas:—

Derby and Nottingham.—Urban districts of Beeston and Stapleford, Carlton, Hucknall, Sutton-in-Ashfield, Swadlingcote, West Bridgford and Matlock, and the rural districts of Bingham, Repton and Shardlow. Chairman, Mr. T. H. Bishop; Member and Reserve Chairman, Mr. H. E. Morris; Member, Mr. J. W. Oldham; Reserve Members, Mr. A. Gibson, Mr. J. Clark and Mr. J. H. Husbands; Office, 19, Reginald Street, Derby.

Meetings of the legal debating society of the United Law Society will be held in January at the Barristers' Refreshment Room, Lincoln's Inn Hall, on Mondays, at 8 p.m. The subjects for debate will be as follows: 13th—"That there should be a United States of Europe"; 20th—"That there is little future in the legal profession"; 27th—"That the property qualification of jurors in (*a*) criminal cases and (*b*) civil cases should be abolished." Those interested are invited to communicate with the secretary, Mr. Oscar T. Hill, 9, Cavendish Square, W.1 (Langham 3373).